



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

March 5, 2003

Mr. Lance Vanzant
Hayes, Coffey & Berry, P.C.
P.O. Box 50149
Denton, Texas 76206

OR2003-1431

Dear Mr. Vanzant:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177475.

The City of Celina (the "city"), which you represent, received a request for all documents related to the investigation of a specified incident and the hiring, employment, and termination of the city's police chief, including certain insurance policies of the city. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we note that you have not submitted information concerning the hiring, employment, and termination of the city's police chief or any insurance information to this office for review. To the extent that additional documents exist that are responsive to the instant request for information, they must be released to the requestor. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

In regard to the submitted information, the minutes, tape recordings, notices, and agendas of a governmental body's public meetings are specifically made public by statute, *see* Gov't Code §§ 551.022 (minutes and tape recordings), 551.043 (notice), and therefore may not be withheld from the public pursuant to section 552.103 of the Government Code. Information

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

specifically made public by statute may not be withheld from the public under any of the Public Information Act's exceptions to public disclosure. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Accordingly, the city must release the submitted agenda.

Further, we note that the remaining submitted information is made expressly public under section 552.022 of the Government Code. Section 552.022 provides, in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

The submitted information pertains to a completed investigation which is expressly public under section 552.022(a). You do not claim that the submitted information is excepted under section 552.108. Therefore, you may withhold this information only if the information is confidential under other law. Although you argue that the submitted information is excepted under section 552.103 of the Government Code, section 552.103 is a discretionary exception and therefore is not "other law" for the purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.-Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 551 (1990) (statutory predecessor to section 552.103 serves only to protect a governmental body's position in litigation and does not itself make information confidential); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, you may not withhold the submitted information under section 552.103.

However, section 552.117(1) excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of governmental body who request that this information be kept confidential under section 552.024. Section 552.117(2) excepts the same information regarding a peace officer regardless of whether the officer made an election under section 552.024 of the Government Code.

To the extent that the submitted information pertains to an individual who was a licensed peace officer at the time this request for information was received, it must be withheld under section 552.117. We note that the officer at issue was terminated prior to the receipt of this request. If this individual remained a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure or a security officer commissioned under section 51.212 of the Education Code at the time of the request, his information must be withheld under

section 552.117(2). If this individual is no longer a licensed officer, his information is still excepted under section 552.117(1) *if* he elected, prior to the date the city received the request for information, to keep his information confidential. *See* Open Records Decision No. 530 at 5 (1989) (whether information is protected by section 552.117(1) must be determined at time request for it is made). In short, the city may not withhold personal information relating to this individual if he is no longer a licensed officer and did not make a timely request for confidentiality under section 552.024. We have marked the information that must be withheld if section 552.117 applies.

Additionally, section 552.130 prohibits the release of information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, the city must withhold Texas driver's license information pursuant to section 552.130 of the Government Code. However, under section 552.023 of the Government Code a person or a person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests. Therefore, the requestor has a special right of access to his client's Texas driver's license information pursuant to section 552.023 of the Government Code, and it must be released in this instance.

In summary, we conclude that: 1) to the extent that the individual at issue was a licensed peace officer at the time this request for information was received or made a timely election to have his personal information kept confidential, it must be withheld under section 552.117 of the Government Code; and 2) you must withhold the Texas driver's license information we have marked pursuant to section 552.130 of the Government Code. All remaining responsive information must be released.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

²We note that some of the submitted information may be confidential and not subject to release to the general public. *See* Gov't Code § 552.023. However, the requestor in this instance has a special right of access to the information. Gov't Code § 552.023. Because some of the information may be confidential with respect to the general public, if the city receives a further request for this information from an individual other than this requestor or his client, the city should again seek our decision.

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 177475

Enc: Submitted documents

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